

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

OTTENHEIJM et al

Atty. Ref.: **4662-20**

Serial No. **10/537,991**

Group: **1796**

Filed: **October 11, 2005**

Examiner: **Peter A. SZEKELY**

For: **PROCESS FOR PREPARING A FLAME RETARDANT POLYAMIDE COMPOUND**

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

FACTUAL DECLARATION UNDER 37 CFR §1.132

Sir:

Pursuant to 37 CFR §1.132, the undersigned, Johannes OTTENHEIJM, hereby declares and states:

1. I am a named co-inventor of the subject matter disclosed and claimed in the above-identified US patent application.
2. On information and belief, I understand that the US Patent Examiner has cited US Patent Application Publication No. 2002/0193494 to Gilmer et al to reject the claims now pending in the above-identified US patent application. Specifically, I understand that the Examiner has asserted in his Office Action of October 31, 2008 that:

“Applicant’s amended range of 1-20 wt.% of polyamide oligomer is too close to the concentration shown by Gilmer et al. (22 wt.%) to make it non obvious. Although the concentration range claimed by applicant does not encompass or overlap the concentration shown by Gilmer et al. in Example 17, a prima facie case of obviousness exists where the claimed range and the values disclosed by the prior art are close enough that one skilled in the art would have expected them to have the same properties.”

3. One purpose of this factual Declaration is to establish that one skilled in this art would *not* have expected properties of the Gilmer et al compositions to have the same properties as those of the present invention. Thus, as will become clear from the data below, compositions having a PA oligomer content above 20 wt.%, including the PA content of 22 wt.% as disclosed in Gilmore et al, are outside the scope of the presently claimed invention.
4. Under my direction and control several composition formulations were made by melt-blending components in an extruder and then extruding the melt-blend through a die plate to form a strand which was subsequent granulated. Test specimens were then molded from the granulated strand and tested to determine whether a UL94V0 rating could be achieved. More specifically, compositions identified as EX-1, EX-2 and CEX-A were made with the components identified in the Table 1 below (all components being expressed in weight percentages):

Table 1

<u>Formulation:</u>	<u>EX-1</u>	<u>EX-2</u>	<u>CEX-A</u>
PA polymer	27.84	34.19	19.84
PA oligomer	16	19.65	24
Glass fibers	30	20	30
Flame Retardant	21	21	21
Synergist	4	4	4
Auxiliary additives	1.16	1.16	1.16
Compounding/Strand Quality	Medium	Marginal	Very bad
UL94V0	All pass	All pass	Not possible

5. The strand quality of EX-1 having 16 wt.% PA oligomer was good enough to make moulded test pieces and received a UL94V0 rating. The stand quality of formulations having 20 wt.% PA oligomer was somewhat marginal in quality to make good moulded test pieces. With slight adjustments in the composition (e.g., lowering slightly the glass content), good test specimens could be moulded.

Thus, the PA oligomer content of EX-2 was actually 19.95 wt.%. Even though the strand quality of EX-2 was marginal, the composition achieved a UL94V0 rating. The composition of CEX-A with 24 wt.% PA oligomer had such poor integrity and strand quality that it was impossible to make good test samples at all.

6. The data above demonstrate that a skilled person would most certainly not expect properties of a composition having a PA oligomer content of above 20 wt.% to be the same as those of the presently claimed invention. Specifically, a skilled person would realize from the data above that in fact worse properties would result as the PA oligomer content exceeded 20 wt.%.
7. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

January 28, 2009

Date Signed

Respectfully Submitted,



Johannes OTTENHEIJM